



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director
Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO MAGNOX PULASKI INCORPORATED

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Magnox Pulaski Inc., for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Magnox Pulaski Inc." or "Magnox" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the structure at Four Magnox Drive located in Pulaski, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Title V Operating Permit, which became effective February 9, 2000 and expires February 9, 2005.
10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Magnox owns and operates a facility in Pulaski, Virginia. This facility is the subject of the Permit.
2. DEQ has noted numerous apparent violations of the Air Pollution Control Law and Regulations. These apparent violations, noted in a Notice of Violation issued by DEQ on May 8, 2003, include:

On April 26, 2003, DEQ staff conducted a Partial Compliance Evaluation of the facility. During this evaluation, staff observed the following:

- A. The facility was unable to provide copies of the fuel certification records. The Permit requires that the facility obtains and maintains fuel certifications for each shipment of Distillate Oil to be burned in the boilers.
- B. The facility was unable to provide records of fuel combustion throughput and is not obtaining fuel certifications stating sulfur content for each shipment of #2 fuel oil received. This information was provided to DEQ at a later date.
- C. The facility has failed to develop a database tabulating all production data into an acceptable format consistent with the Title V reporting requirements.
- D. The facility has failed to conduct weekly observations of the flow meters to continuously measure the flow across the scrubbers. The facility stated that the flow meters were not installed and therefore none of the required documentation could be maintained.
- E. The facility has failed to conduct weekly observations of the differential pressure drops across the baghouses. The facility was unable to provide complete monitoring records for various baghouses.
- F. The facility has failed to conduct weekly observations for the presence of visible emissions from the baghouse/boiler stacks and maintain the required documentation. The facility was unable to provide complete monitoring records for various baghouses.

- G. The source failed to submit periodic monitoring reports required by Title V for the periods of July 2000 through December 2000, January 2001 through June 2001, July 2001 through December 2001, and July 2002 through December 2002. These reports were due to DEQ on March 1 and September 1 of each calendar year.
- H. The source failed to submit periodic monitoring reports required by Title V for the periods of January 2001 through December 2001 and January 2002 through December 2002. These reports were due to EPA and DEQ on March 1 of each calendar year.

The observations above are cited under the following regulations and the applicable Permit Conditions:

Condition III.C.1, of the February 9, 2000 Title V Permit, states that the permittee shall obtain and maintain a Fuel Certification for each shipment of Distillate Oil to be burned in the boilers.

Condition III.C.2, of the February 9, 2000 Title V Permit, states that the permittee shall maintain Weekly Logs of fuels burned, Sulfur content of the Distillate Oil burned in the boilers, and Fuel Certifications.

Condition IV.1.A.2, of the February 9, 2000 Title V Permit, states that the permittee shall calculate Annual Calcined Iron Oxide production data, monthly as the sum of each consecutive 12 month period for the Kilns/Calciners.

Condition IV.1.C.1, of the February 9, 2000 Title V Permit, states that the permittee shall maintain Annual/Monthly Calcined Iron Oxide production data from the overall facility, calculated monthly as the sum of each consecutive 12 month period.

Condition IV.3.A.5 of the February 9, 2000 Title V Permit, states that the permittee shall maintain Annual production data from the Multi-purpose Dryer (#247), calculated monthly as the sum of each consecutive 12-month period.

Condition IV.3.A.6 of the February 9, 2000 Title V Permit, states that the permittee shall maintain Monthly production data from the Multi-purpose Dryer (#247), calculated monthly as the sum of each consecutive 12-month period.

Condition IV.3.A.7 of the February 9, 2000 Title V Permit, states that the permittee shall maintain records demonstrating that the Cobalt Adsorption process contains no more than 76 lbs. of Cobalt per ton of finished product.

Condition IV.3.C.1 of the February 9, 2000 Title V Permit, states that the permittee shall maintain Annual/Monthly Calcined Iron Oxide production data from the overall facility.

Condition IV.3.C.2 of the February 9, 2000 Title V Permit, states that the permittee shall maintain Yearly/Monthly production data from the Multi-purpose Dryer (#247), calculated monthly as the sum of each consecutive 12-month period.

Condition IV.3.C.3 of the February 9, 2000 Title V Permit, states that the permittee shall maintain Yearly/Monthly Cobalt production data (lbs./ton), calculated as the sum of each consecutive 12 month period.

Condition IV.3.B.2 of the February 9, 2000 Title V Permit, states that the permittee shall install and maintain a flow meter to continuously measure the liquid flow to the scrubber.

Condition IV.3.C.4 of the February 9, 2000 Title V Permit, states that the permittee shall log entries at least weekly of the control device monitoring data required by this permit.

Condition IV.2.C.3 of the February 9, 2000 Title V Permit, states that the permittee shall log entries at least weekly of the control device monitoring data required by this permit (pressure drops across fabric filters).

Condition IV.3.B.1 of the February 9, 2000 Title V Permit, states that the permittee shall install fabric filters with a device to continuously measure the differential pressure drop across the fabric filters as required by this permit.

Condition IV.3.C.4 of the February 9, 2000 Title V Permit, states that the permittee shall log entries at least weekly of the control device monitoring data required by this permit (pressure drops/visible emission observations for the fabric filters).

Condition IV.3.C.5 of the February 9, 2000 Title V Permit, states that the permittee shall log entries at least weekly of the Visible Emissions Monitoring results required by the Monitoring section under Facility Wide Conditions of this permit.

Condition V.A of the February 9, 2000 Title V Permit, states that the permittee shall conduct weekly Visible Emission observations for each emissions unit.

Condition IX.C.3 of the February 9, 2000 Title V Permit, states that the permittee shall submit results of monitoring contained in any applicable requirement to DEQ no later than March 1 and September 1 of each calendar year.

Condition IX.D of the February 9, 2000 Title V Permit, states that the permittee shall submit to EPA and DEQ, no later than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitations standards or work practices.

3. Magnox has corrected many of the problems cited in the Notice of Violation. Magnox is currently working with Stratus Environmental Solutions, Inc. to assist with returning Magnox into compliance with all recordkeeping and reporting requirements.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders Magnox, and Magnox agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Magnox, and Magnox voluntarily agrees to pay a civil charge of **\$20,668.35** in settlement of the violations cited in this Order.

1. **\$5,167.09** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Magnox's Federal ID number or Social Security Number if Magnox does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. **\$15,501.26** of this civil charge shall be satisfied upon completion by Magnox of a Supplemental Environmental Project (SEP) pursuant to Virginia Code 10.1-1186.2 and as described in Appendix B of this Order.
2. The Department has the sole discretion to:
 - a. authorize any alternate SEP proposed by the Facility; and
 - b. determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
4. Should the Department determine that the SEP, or alternate SEP, has not been completed in a satisfactory manner, the Department shall notify Magnox of such determination in writing. Within 30 days of such notification, Magnox shall pay

the amount specified in Paragraph 2 above in accordance with the procedures specified in Paragraph 1 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Magnox, for good cause shown by Magnox, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Magnox by DEQ on May 8, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Magnox admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Magnox consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Magnox declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Magnox to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Magnox shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Magnox shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Magnox shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Magnox. Notwithstanding the foregoing, Magnox agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Magnox. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Magnox from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Magnox voluntarily agrees to the issuance of this Order.

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And it is so ORDERED this 26th day of JULY, 2004.

Steven A. Dietrich
for Robert G. Burnley, Director
Department of Environmental Quality

Magnox voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 7/14/2004

Commonwealth of Virginia
City/County of Pulaski

The foregoing document was signed and acknowledged before me this 14 day of
JULY, 2004, by CARMINE A. DINIITO, who is
(name)

PRESIDENT of Magnox, on behalf of the Corporation.
(title)

Lain S. Kanode
Notary Public

My commission expires: 10/31/07

APPENDIX A

Magnox shall:

1. **From the effective date of the Order, implement programs to ensure that all conditions of the Title V Permit are complete and accurate. These conditions shall be certified by the Semi-Annual and Annual Compliance reports and shall be submitted to the DEQ in the specified time limits set forth in the Title V Permit.**

APPENDIX B

SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The Supplemental Environmental Project (SEP) to be performed by Magnox is as follows:

Project 1 - Installation of a variable idle control unit on the #5 RX Gas Generator feeding the Calciners and kiln at the facility.
2. The SEP shall be completed by December 31, 2005.
3. Magnox certifies that they have not commenced performance of the SEP prior to the identification of the violations cited in this Consent Order and the approval of the SEP by the Department.
4. The net cost of the SEP to Magnox shall not be less than \$15,501.26. In the event that the final net cost of the SEP is less than this amount, Magnox shall pay the remainder of the amount in accordance with Paragraph D.3 of this Order to the Commonwealth of Virginia, unless otherwise agreed to by the Department. Net costs shall mean the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
5. Magnox acknowledges that it is solely responsible for completion of the SEP. Any transfer of funds, tasks, or otherwise by Magnox to a third party, shall not relieve Magnox of its responsibility to complete the SEP as contained in this Order.
6. Magnox shall provide the Department with written verification of completion or progress reports of the SEP Project by providing a work schedule. The project completion or progress reports verification must be submitted to the Department within thirty (30) days from the effective date of the Order on a quarterly basis, due the 10th day of each quarter.
7. Magnox shall submit written verification to the Department in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation of the final overall and net cost of the SEP within thirty (30) days of the project completion date. For the purposes of this submittal, net costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from Magnox's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
8. In the event that Magnox publicizes the SEP or the results of the SEP, Magnox shall state in a prominent manner that the project is part of a settlement for an enforcement action.

9. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Robert W. Saunders
Department of Environmental Quality
West Central Regional Office
3019 Peters Creek Road
Roanoke, VA 24019